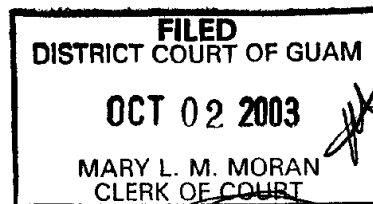


ORIGINAL

CARLSMITH BALL LIP

ELYZE McDONALD  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Defendant  
Continental Micronesia, Inc.  
dba Continental Micronesia and  
Continental Airlines, Inc.



IN THE DISTRICT COURT OF GUAM

TONY H. ASHTIANI,

Plaintiff,

vs.

CONTINENTAL MICRONESIA, INC.  
dba CONTINENTAL MICRONESIA  
and CONTINENTAL AIRLINES, INC.,

Defendant.

CIVIL CASE NO. CV02-00032

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PROTECTION ORDER**

Plaintiff's Motion for Protective Order is unfounded and dilatory. It is intended to delay the taking of his deposition, scheduled on October 8 and 9, 2003. Furthermore, it is not in compliance with the Federal Rules of Civil Procedure or the Local Rules of Practice, as Plaintiff has not met and conferred with Defendant prior to bringing the Motion. The Court should deny the motion and award sanctions against Plaintiff, in the amount Defendant has incurred in opposing the Motion.

1. **Plaintiff has not complied with Federal Rules of Civil Procedure 26(c) and 37(a)(2), and Local Rule 37.1.** Federal Rule 26(c) states that a motion for protective order must include a certification that the movant has in good faith conferred or attempted to confer with the opposing party to resolve a discovery dispute without court action. Local Rule 37.1 confirms this federal rule. Plaintiff's certification filed with the Motion deals with a separate discovery dispute. Plaintiff never contacted defense counsel to resolve this discovery dispute prior to filing his Motion. See Ex. A (Declaration of Elyze McDonald) at ¶9.

Absent compliance with these rules, the Court should completely deny consideration of the motion. Doe v. National Hemophilia Found., 194 F.R.D. 516, 519 (D. Md. 2000); Haselhorst v. Wal-Mart Stores, Inc., 163 F.R.D. 10, 11 (D. Kan. 1995).

2. **Plaintiff has been given reasonable notice of the deposition.** Plaintiff was originally served with a Notice of Deposition on September 18, 2003, and thereby notified Plaintiff that Defendant will be taking his deposition on October 8 and 9, 2003. See Ex. A at ¶4, Ex. C. Because Plaintiff objected to the Notice because of scheduling conflicts, Defendant served Plaintiff with an Amended Notice of Deposition on September 24, 2003. Ex. A at ¶5, Exs. D and E. Plaintiff had two weeks' notice of the deposition. In other courts, eight days' notice constitutes "reasonable notice" under Federal Rule of Civil Procedure 30(b)(1). See Jones v. United States, 720 F. Supp. 355, 366 (S.D.N.Y. 1989).

3. **The Notice of Deposition is not Untimely.** Because Defense counsel currently lives off-island, Defendant requested an extension of the discovery cutoff deadline, originally October 1, 2003, in order for defense counsel to arrange to travel to Guam to take the deposition. On September 8, 2003, Plaintiff granted Defendant an extension of the discovery cut-off date of another thirty days, to October 31, 2002. See Ex. B. As the only purpose of the

request for the extension was to take Plaintiff's deposition, Defendant communicated to Plaintiff that it did not require a full thirty days, and drafted a Stipulation to extend the discovery deadlines to October 17, 2003. Ex. A at ¶6, Ex. F. The Stipulation also listed new deadlines for discovery motions, as would be necessary since the discovery cutoff date was being extended.

Defendant handed Plaintiff the proposed Stipulation on September 17, 2003. Despite requests from defense counsel to sign the Stipulation, Plaintiff stated that he was not sure if he could comply with the new discovery motion cutoff deadlines. Ex. A at ¶7. Nevertheless, Plaintiff never revoked his extension, or gave defense counsel any indication that he would not honor his extension.

The Deposition is therefore timely under the agreement between the parties.


4. **Defendant has no intention to prevent Plaintiff to file a motion to compel discovery.** Defendant has been completely cooperative throughout the discovery process. Plaintiff has threatened to bring motions to compel on other issues, and Defendant has generously offered to assist in drafting Local Rule 37.1 Stipulations, as Plaintiff repeatedly pleas to Defendant that he types slow and does not have any office assistance. Defendant does not understand Plaintiff's statement in his motion that Defendant is trying to prevent him from filing a motion to compel.

5. **The Location of the Deposition does not Violate Plaintiff's Procedural Due Process Rights.** Defendant does not understand how holding a deposition at defense counsel's office will constitute a home field advantage. In any event, the party noticing the deposition usually has the right to choose the location. See Buzzeo v. Board of Educ., Hempstead, 178 F.R.D. 390, 392 (E.D.N.Y. 1998); Riley v. Murdock, 156 F.R.D. 130, 132 (E.D.N.C. 1994); Payton v. Sears, Roebuck & Co., 148 F.R.D. 667, 669 (N.D. Ga. 1993).

6. **The Court should Award Sanctions.** Under Rules 26 and 37, the Court has the power to requiring a moving party to pay the party opposing a discovery motion attorneys fees unless the Court finds the motion was justified. Fed. R. Civ. P. 26(c) and 37(a)(4). This Motion is completely unfounded. Plaintiff has not asserted a single meritable issue, and thereby has forced Defendant to incur needless attorney fees in opposing the Motion. Defendant has been completely cooperative throughout the discovery phase of this case, and has been caught off-guard by the filing of this Motion. Knowing that off-island defense counsel had travel arrangements to take Plaintiff's deposition, Plaintiff waited until the last hour to object to the deposition, waiting more than a week after being served with the Amended Notice of Deposition and two weeks after the Notice of Deposition. The Court should award sanctions and award Defendants its attorneys fees incurred in responding to this unfounded motion.

Respectfully submitted this 2nd day of October 2003.

CARLSMITH BALL LLP

  
ELYZE McDONALD  
Attorneys for Defendant  
Continental Micronesia, Inc.  
dba Continental Micronesia and  
Continental Airlines, Inc.

**CARLSMITH BALL LLP**

**ELYZE McDONALD**

Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Defendant  
Continental Micronesia, Inc.  
dba Continental Micronesia and  
Continental Airlines, Inc.

**IN THE DISTRICT COURT OF GUAM**

**TONY H. ASHTIANI,**

**Plaintiff,**

**vs.**

**CONTINENTAL MICRONESIA, INC.  
dba CONTINENTAL MICRONESIA  
and CONTINENTAL AIRLINES, INC.,**

**Defendant.**

**CIVIL CASE NO. CV02-00032**

**DECLARATION OF ELYZE  
McDONALD**

I, Elyze McDonald, declare:

1. I am an attorney at law licensed to practice before the District Court of Guam.. I am an attorney with the law firm of Carlsmith Ball LLP, attorneys of record for Defendant Continental Micronesia, Inc.
2. If called as a witness, I would and could competently testify thereto to all facts within my personal knowledge except where stated upon information and belief.

3. As Plaintiff admits in its Motion for Protective Order, he granted Defendant an extension of the discovery cutoff deadline by an extra thirty (30) days, to October 31, 2003. Attached hereto as Exhibit B is a true and correct copy of that extension.

4. Defendant subsequently served a Notice of Deposition on September 18, 2003, informing Plaintiff of his deposition on October 8 and 9. Attached hereto as Exhibit C is a true and correct copy of that Notice of Deposition.

5. After receiving Plaintiff's Objection to the Notice of Deposition, a true and correct copy of which is attached hereto as Exhibit D, Defendant renoticed the Deposition and served an Amended Notice of Deposition on September 24, 2003, effectively giving Plaintiff 14 days' notice of the deposition. Attached hereto as Exhibit E is a true and correct copy of that Amended Notice of Deposition.

6. As the deposition would be held in the earlier half of the month of October, I proposed to Plaintiff that we stipulate to extend the discovery deadlines only until October 17, 2003, and to file it with the Court. The proposed deadlines are listed in the attached draft Stipulation and Order to Reschedule Discovery Deadlines, a true and correct copy of which is attached hereto as Exhibit F.

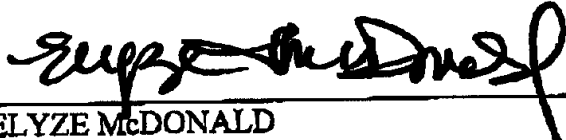
7. Despite requests from myself, Plaintiff stated to me that he was not sure whether he would sign the Stipulation because he was not sure if he would be able to comply with the discovery cutoff date. I responded that Defendant is amenable to extending discovery and discovery motion deadlines, but Plaintiff would need to propose dates.

8. On September 15, 2003, Plaintiff filed a Second Request for Production of Documents, a true and correct copy of which is attached hereto as Exhibit G.

9. Plaintiff NEVER contacted me to meet and confer regarding this discovery dispute. While the parties conducted meetings to confer regarding other discovery disputes, Plaintiff never contacted me to discuss the timing of the Amended Notice of Deposition. Attached hereto as Exhibits H and I are correspondence between the parties pertaining to the subjects of previous meet and confer meetings. Defendant has always cooperated with Plaintiff, and has even drafted Local Rule 37.1 Stipulations for motions to compel that Plaintiff intended to bring.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

<sup>1st</sup>  
Executed this ~~2nd~~ day of October 2003, at Honolulu, Hawaii.

  
ELYZE McDONALD

Tony H. Ashtiani  
P.O.Box 12723  
Tamuning Guam 96931  
TEL/FAX 1-(671) 653-5575  
CELL 1-(671) 688-4844

September 8, 2003.

**CARLSMITH BALL LLP**

Ms. Elyze McDonald  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue  
Hagatna, Guam 96932-5027

**Re: "Meet and Confer" & Discovery cut off extension.**

**In District Court of Guam CV 02-00032**

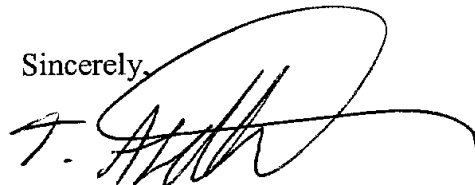
Dear Attorneys Mr. Ledger and Ms. McDonald:

Thank you for your letter dated September 3, 2003. In which you are requesting to meet and confer via telephone, I am preparing for a summarized meeting so that it will not take much of our time.

Furthermore, you had requested 30 (thirty) days extension on discovery cut off date due to compact schedule of Mr. Ledger, I will be more than happy to accommodate you this extension.

I respectfully ask that the time frame of the deposition does not interfere with dropping or picking up my children at school or the time after school, which is to assist with their homework. Other than that, I am available from 8:30 a.m. to 1:30 p.m.

Sincerely,



Tony H. Ashtiani

RECEIVED  
CARLSMITH BALL  
Date: 09/08/03  
in 2:02 by Jm



**COPY**

CARLSMITH BALL LLP

ELYZE MCDONALD  
134 West Soledad Avenue  
Bank of Hawaii Bldg., Suite 401  
P.O. Box BF  
Agana, Guam 96932-5027  
Tel. No. (671) 472-6813

Attorneys for Defendants  
Continental Micronesia, Inc.  
dba Continental Micronesia  
and Continental Airlines, Inc.

*T. Ashtiani*  
*TONY. ASHTIANI*  
*SEP. 18, 2003.*

IN THE DISTRICT COURT OF GUAM

TONY H. ASHTIANI,	)	CIVIL CASE NO. CIV02-00032
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF DEPOSITION
	)	
CONTINENTAL MICRONESIA, INC.	)	
dba CONTINENTAL MICRONESIA, and	)	
CONTINENTAL AIRLINES, INC.,	)	
	)	
Defendants.	)	
_____	)	

TO: TONY H. ASHTIANI

PLEASE TAKE NOTICE that Continental Micronesia, Inc., Defendant in the above-entitled action, will take the deposition of TONY H. ASHTIANI at the law offices of Carlsmith Ball LLP, Suite 401, Bank of Hawaii Building, 134 West Soledad Avenue, Hagåtña, Guam 96910, on the date and time specified below:

DATE:

Wednesday, October 8, 2003

Thursday, October 9, 2003

TIME:

9:00 a.m. - 12:00 p.m.

1:30 p.m. - 4:00 p.m.

9:00 a.m. - 12:00 p.m.

1:30 p.m. - 4:00 p.m.

The deposition will be recorded stenographically pursuant to the Rules of Civil Procedure for the Superior Court of Guam.

If said depositions are not completed on the date set out above, the taking of the depositions will be continued from day to day thereafter, except for Sundays and holidays, at the same place, until completed.

DATED this 18<sup>th</sup> day of September 2003.

CARLSMITH BALL LLP



ELYZE McDONALD  
Attorneys for Defendants  
Continental Micronesia, Inc.  
dba Continental Micronesia  
and Continental Airlines, Inc.

1 Tony H. Ashtiani  
P.O.Box 12723  
2 Tamuning Guam 96931  
671-688-4844  
3 671-653-5575

4  
5 IN DISTRICT COURT OF GUAM  
6 TERRITORY OF GUAM  
7

8 Tony H. Ashtiani, )

9 Plaintiff, )

10 Vs. )

11 Continental Micronesia Inc, )

12 Db, Continental Micronesia, )

13 Continental Airlines, )

14 )  
15 Defendant )  
16

Civil Case No.: 02-00032

OBJECTION TO NOTICE OF  
DEPOSITION AND ITS CONTENTS.

17  
18 TO: DEFENDANT CONTINETAL MICRONESIA INC., AND ITS ATTORNEYS OF  
19 RECORD:

20 This matter before the defense counsel in reference to  
21 notice of deposition which was received on September,18 2003.  
22

23 1. Plaintiff had submitted a letter to defense counsel on  
24 September 8, 2003. "EXHIBIT A" which had provided them with  
25 availability of time frame which plaintiff could attend the

**EXHIBIT D**

RECEIVED  
CARLSMITH BALL

CV 02-00032 PAGE 1 OF 2

Date:

09/18/03

By:

See

1 deposition. Such advance notice was not noted, thus plaintiff  
2 objects to the afternoon sessions of such deposition.  
3

4 2. This case is In District court of Guam and that  
5 Superior Court of Guam Rules of Civil Procedure does not apply.  
6 "EXHIBIT B".  
7

8 3. Plaintiff also objects to the location of such  
9 deposition to be taken and requests that place of deposition be  
10 taken at a mutual place rather than defendant having home field  
11 advantage over the pro se plaintiff, and that Guam Law Library  
12 Conference rooms "A" or "B" are available and can be reserved  
13 for such activity.  
14

15 4. Plaintiff also requesting the names and numbers of  
16 defense counsels which will be deposing the pro se plaintiff.  
17

18 Dated this 18<sup>TH</sup> day of September , 2003.  
19

20 Submitted Respectfully.  
21

22 Tony H. Ashtiani  
23

24   
25

Pro se plaintiff

Tony H. Ashtiani  
P.O.Box 12723  
Tamuning Guam 96931  
TEL/FAX 1-(671) 653-5575  
CELL 1-(671) 688-4844

September 8, 2003.

**CARLSMITH BALL LLP**

Ms. Elyze McDonald  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue  
Hagatna, Guam 96932-5027

**Re: "Meet and Confer" & Discovery cut off extension.**

**In District Court of Guam CV 02-00032**

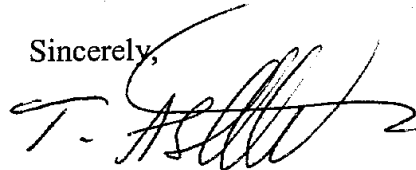
Dear Attorneys Mr. Ledger and Ms. McDonald:

Thank you for your letter dated September 3, 2003. In which you are requesting to meet and confer via telephone, I am preparing for a summarized meeting so that it will not take much of our time.

Furthermore, you had requested 30 (thirty) days extension on discovery cut off date due to compact schedule of Mr. Ledger, I will be more than happy to accommodate you this extension.

I respectfully ask that the time frame of the deposition does not interfere with dropping or picking up my children at school or the time after school, which is to assist with their homework. Other than that, I am available from 8:30 a.m. to 1:30 p.m.

Sincerely,



Tony H. Ashtiani

RECEIVED  
CARLSMITH BALL

date:

n

9/8/03  
2:01 By: Sui

DATE:

Wednesday, October 8, 2003

Thursday, October 9, 2003

TIME:

9:00 a.m. - 12:00 p.m.  
1:30 p.m. - 4:00 p.m.

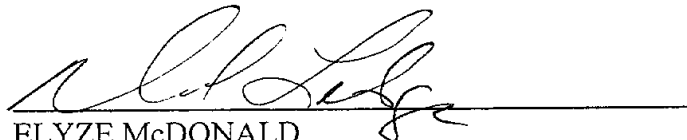
9:00 a.m. - 12:00 p.m.  
1:30 p.m. - 4:00 p.m.

The deposition will be recorded stenographically pursuant to the Rules of Civil Procedure for the Superior Court of Guam.

If said depositions are not completed on the date set out above, the taking of the depositions will be continued from day to day thereafter, except for Sundays and holidays, at the same place, until completed.

DATED this 18<sup>th</sup> day of September 2003.

CARLSMITH BALL LLP



ELYZE McDONALD  
Attorneys for Defendants  
Continental Micronesia, Inc.  
dba Continental Micronesia  
and Continental Airlines, Inc.

**COPY**

T. ASHTIANI  
T. ASHTIANI  
SEP, 24, 2003.  
11:30

CARLSMITH BALL LLP

ELYZE MCDONALD  
134 West Soledad Avenue  
Bank of Hawaii Bldg., Suite 401  
P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel. No. (671) 472-6813

Attorneys for Defendants  
Continental Micronesia, Inc.  
dba Continental Micronesia  
and Continental Airlines, Inc.

IN THE DISTRICT COURT OF GUAM

TONY H. ASHTIANI,

Plaintiff,

vs.

CONTINENTAL MICRONESIA, INC.  
dba CONTINENTAL MICRONESIA, and  
CONTINENTAL AIRLINES, INC.,

Defendants.

CIVIL CASE NO. CIV02-00032

**AMENDED NOTICE OF DEPOSITION**

TO: TONY H. ASHTIANI

**PLEASE TAKE NOTICE** that Continental Micronesia, Inc., Defendant in the above-entitled action, will take the deposition of TONY H. ASHTIANI at the law offices of Carlsmith Ball LLP, Suite 401, Bank of Hawaii Building, 134 West Soledad Avenue, Hagåtña, Guam 96910, on the dates and times specified below:

**DATE:**

Wednesday, October 8, 2003

Thursday, October 9, 2003

**TIME:**

9:00 a.m. - 12:30 p.m.

9:00 a.m. - 12:30 p.m.

The deposition will be recorded stenographically pursuant to the Federal Rules of Civil Procedure and the Local Rules of Practice of the District Court of Guam.

If said depositions are not completed on the date set out above, the taking of the depositions will be continued from day to day thereafter, except for Sundays and holidays, at the same place, until completed.

DATED this 23rd day of September 2003.

CARLSMITH BALL LLP

*ms*  
\_\_\_\_\_  
ELYZE McDONALD  
Attorneys for Defendants  
Continental Micronesia, Inc.  
dba Continental Micronesia  
and Continental Airlines, Inc.



CARLSMITH BALL LIP

ELYZE McDONALD  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Defendant  
Continental Micronesia, Inc.  
dba Continental Micronesia and  
Continental Airlines, Inc.

*Received copy TO Review.  
To Read Prior TO sign.*

*T. Ashtiani*  
*sep, 17, 03.*

IN THE DISTRICT COURT OF GUAM

TONY H. ASHTIANI,

Plaintiff,

vs.

CONTINENTAL MICRONESIA, INC.  
dba CONTINENTAL MICRONESIA  
and CONTINENTAL AIRLINES, INC.,

Defendant.

CIVIL CASE NO. CV02-00032

**STIPULATION AND ORDER TO  
RESCHEDULE DISCOVERY  
DEADLINES**

WHEREAS, Defendant seeks to extend the discovery cutoff deadline to accommodate Defendant's counsel, temporarily residing off-island, to travel to Guam to conduct further discovery and depositions in this case; and

WHEREAS such depositions will be conducted in the second week of October, 2003; and

WHEREAS Plaintiff has agreed to such extension,

IT IS HEREBY STIPULATED by and between the undersigned that the current Discovery cutoff date of October 1, 2003 be rescheduled to October 17, 2003.

IT IS ALSO HEREBY STIPULATED that Discovery Motions currently due no later than October 8, 2003 be rescheduled to October 24, 2003 and, that the Discovery Motions Hearing date currently scheduled to be heard no later than October 29, 2003 be rescheduled to November 14, 2003.

SO STIPULATED AND AGREED TO this \_\_\_\_ day of September 2003.

CARLSMITH BALL LLP

\_\_\_\_\_  
ELYZE McDONALD  
Attorneys for Defendant  
Continental Micronesia, Inc.  
dba Continental Micronesia and  
Continental Airlines, Inc.

SO STIPULATED AND AGREED TO this \_\_\_\_ day of September 2003.

\_\_\_\_\_  
TONY H. ASHTIANI  
Pro se Plaintiff

**ORDER**

**IT IS HEREBY ORDERED that:**

1. Discovery cutoff date is October 17, 2003;
2. Discovery Motions shall be filed not later than October 24, 2003, and heard on November 14, 2003.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
HONORABLE JOHN S. UNPINGCO  
Chief Judge, District Court of Guam

RECEIVED  
ARL SMITH BALL

09/15/2003

2:40p

By: [Signature]

Tony H. Ashtiani  
P.O.Box 12723  
Tamuning Guam 96931  
671-688-4844  
671-653-5575

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

Tony H. Ashtiani,  
Plaintiff,

Vs.

Continental Micronesia Inc,  
Dba, Continental Micronesia,  
Continental Airlines,  
Defendant

Civil Case No.: 02-00032

PLAINTIFF SECOND REQUEST OF THE  
PRODUCTION OF DOCUMENTS TO  
DEFENDANT CONTINENTAL  
MICRONESIA INC,

Fed R. Civ P. 34

TO: DEFENDANT CONTINETAL MICRONESIA INC., AND ITS ATTORNEYS OF  
RECORD: Plaintiff hereby request pursuant to Fed R Civ P rule 34,  
Plaintiff requests that Defendant respond in writing, under  
oath, to the following Requests for Production of Documents  
within 30 days from the service and this request, and produce  
and permit inspection and copying of documents described below  
on October, 15, 2003. At 0900 A.M to plaintiff at Guam Law  
Library at 141 San Ramon street Conference room B Hagatna, Guam.  
In lieu of producing the documents for inspection, defendant may

1 forward legible copies of them to plaintiff on or before the  
2 date of production, except that defendant must label all  
3 documents (e.g. Exhibit A, B, C, etc.). And indicate in  
4 writing which documents are responsive to which requests).  
5 As an alternative earlier means of production, defendant may  
6 photocopy all responsive documents and deliver the same to the  
7 plaintiff on or before the date set for production. Defendants  
8 and the counsel of records are reminded of their obligations  
9 under rule 34 of the Federal rule of civil procedure.  
10 Terms are defined in accordance with Rule 1001 of Rules of  
11 Evidence.

#### 12 13 DEFINITION AND INSTRUCTION

14 The word "document is used in these requests in the broad  
15 and liberal sense and means any written, typed, recorded or  
16 graphic matter, however produced or reproduced, of any kind and  
17 description, whether sent, received, or neither, and all copies  
18 thereof which differ in any way from the original (whether by  
19 interlineations, stamped received, notation, indication of copy  
20 sent or received, or otherwise) regardless of whether designated  
21 confidential, privileged or otherwise and whether such is an  
22 original, master, duplicate or copy, including, but not limited  
23 to, papers, notes, accounts statements or summaries, ledgers,  
24 pamphlets, periodicals, books, advertisements, drawings,  
25 telegrams, audio or video tape recordings, communications,

1 including inter-office and intra office memoranda, delivery  
2 tickets, bills of lading, invoices, quotations, claims  
3 documents, reports, records, studies, work sheets, working  
4 papers, corporate records, minutes of meetings, circulars,  
5 bulletins, notebooks, bank deposit slips, bank check, canceled  
6 checks, data processing cards and/or tapes, computer software,  
7 electronic mail messages, photographs, transcriptions or sound  
8 recordings of any type of personal or telephone conversations,  
9 interviews, negotiations, meetings or conferences, or any other  
10 things similar to any of the foregoing.

11       The term "communication" as used in these requests means  
12 any words heard, spoken, written or read, regardless of whether  
13 designated confidential, privileged or otherwise, and including,  
14 without limitation, words spoken or heard at any meeting,  
15 discussion, interview, encounter, conference, speech,  
16 conversation or other similar occurrence, and words written or  
17 read from any document(s) as described above.

18       The term "person" as used in these requests means  
19 individuals or entities or any type, including but not limited  
20 to, natural persons, governments (or agencies thereof), quasi-  
21 public entities, corporations, partnerships, groups, mutual or  
22 joint ventures and other forms of organizations or associations.

23       The term "date" as used in these requests shall mean the  
24 exact day, month and year, if ascertainable, or if not the best  
25

1 approximation thereof (including by relationship to other  
2 events).

3 As used herein, the words or phrases, "explaining,"  
4 "describing," "defining," "concerning," "reflecting," or  
5 "relating to" when used separately or in conjunction with one  
6 another mean, directly or indirectly, mentioning, pertaining to,  
7 involving, being connected with or embodying in any way or to  
8 any degree the stated subject matter.

9 The term "relate to," or any similar phrase, shall mean  
10 refer to, reflect on, concern or be in any way logically or  
11 factually connected with the matter discussed.

12 The term "employee" means any person who receives wages, a  
13 salary or other income, in any form, from the defendant,  
14 including, without limitation, supervisors, administrators,  
15 manager, directors, officers, board of directors members,  
16 contract workers, commission workers or any combination thereof.

17 For each document encompassed by these requests which  
18 defendant claims to be privileged from or otherwise protected  
19 against discovery on any ground, defendant shall expressly make  
20 the claim, fully setting forth all grounds for the privileged or  
21 protection and shall expressly describe the document with a  
22 degree of specificity that will enable pro se plaintiff to  
23 assess the applicability of the claimed privilege or protection.

24 If a request is made for production of documents which are  
25 no longer in the possession, custody and/or control of

1 defendant, state when such documents were lost, destroyed or  
2 otherwise disposed of; how recently where they in the  
3 possession, custody and/or control of defendant and what  
4 dispositions were made of them, including the identity of the  
5 person(s) believed to be last or presently in possession,  
6 custody and/or control of the documents. If a document has been  
7 destroyed, if applicable, state when such document was  
8 destroyed, identify the person(s) who destroyed the documents,  
9 and the person(s) who directed that the document be destroyed  
10 and the reasons the document was destroyed.

11 Unless otherwise specified, each request requires a full  
12 response for every and entire period of time with respect to  
13 which defendant intends to offer any evidence.

14 If more than one copy of a requested document (e.g., a  
15 clean copy and a copy with handwritten or other notations)  
16 exists, and if one or more documents have any writing on them,  
17 which differentiate them from other copies, defendant shall  
18 produce all copies.

19 These document requests are continuing and, if at any time  
20 subsequent to production of documents requested herein, any  
21 document responsive to this request is located or comes within  
22 the custody, possession or control of the defendant, plaintiff  
23 requests that it forthwith be produced to the full extent  
24 required by Rule 34 of the Federal Rules of Civil Procedure.  
25

1  
2 REQUESTED DOCUMENTS  
3

4 1. All documents, collections of documents, official or  
5 unofficial, formal or informal, maintained or kept by Defendant,  
6 in reference to the date that Mr. Dixon McKinzie became director  
7 of human resources dept responsible for EEO and affirmative  
8 action of Continental Micronesia Inc, in Guam.  
9

10 2. All documents, collections of documents, official or  
11 unofficial, formal or informal, maintained or kept by Defendant,  
12 in reference to the date that Mr. James Hammer became director  
13 of maintenance of Continental Micronesia Inc, in Guam.  
14

15 3. All documents, referring or relating to describing  
16 collections of documents, official or unofficial, formal or  
17 informal, maintained or kept by Defendant, employment record  
18 including, without limitation (a) names of terminated employees  
19 (b) dates of termination (c) terminated employee's nationality,  
20 at Continental Micronesia Inc., in Guam within the time frame of  
21 Mr. James Hammer acting in official capacity as director of  
22 maintenance at CMI.  
23

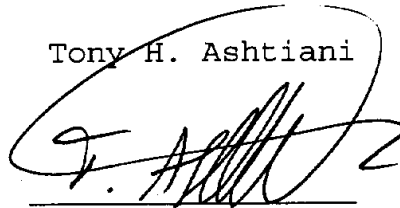
24 4. All documents, referring or relating to describing  
25 collections of documents, official or unofficial, formal or



1 informal, maintained or kept by Defendant, employment record  
2 including, without limitation (a) names of terminated employees  
3 (b) dates of termination (c) terminated employee's nationality,  
4 at Continental Micronesia Inc., in Guam within the time frame of  
5 Mr. Dixon McKinzie acting in official capacity as manger or  
6 director of human resources at CMI responsible for EEO and  
7 affirmative action.

8  
9  
10 Date: Sep, 15, 2003 Respectfully submitted,

11  
12  
13 Tony H. Ashtiani

14   
15

16 Pro se litigant  
17  
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20  
21  
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24  
25

Tony H. Ashtiani  
P.O.Box 12723  
Tamuning Guam 96931  
TEL/FAX 1-(671) 653-5575  
CELL 1-(671) 688-4844

RECEIVED  
CARLSMITH BALL  
Date: 9/16  
in: 4:50 PM  
By: [Signature]

September 16, 2003.

CARLSMITH BALL LLP  
Ms. Elyze McDonald  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue  
Hagatna, Guam 96932-5027

**Re: Discovery Dispute**

**In District Court of Guam CV. 02-00032**

Dear Attorney Ms. McDonald:

Thank you for "Meet and Confer" via telephone on **September 12, 2003. (Guam date)**, as you are well aware, I clearly indicated to you that my responses to defendant's interrogatories and production of documents were hampered and I had explained the reasons in my general objections in both documents. In our phone conversation I had provided a list of paragraph numbers and that each of plaintiff's request were individually explained to you. Further more my intentions of meet and confer was to bring a motion to compel in good faith effort to gather information in regards to statistics and pattern of practice of Continental Micronesia Inc., in Guam under the management in 1998 to 2002. Moreover, I was more than happy to provide you "similar case" McAlester Vs. United Airlines 851 f.2d 1249. In all retro respect it appears that you have a second "Meet and Confer" scheduled which I will be more than happy to attend and further discuss discovery issues with you.

Very truly yours,  
[Signature]  
Tony H. Ashtiani

Cc; Attorney Mr. David Ledger

**EXHIBIT H**

COPY

**CARLSMITH BALL LLP**

A LIMITED LIABILITY LAW PARTNERSHIP

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DIRECT DIAL NO.

EMCDONALD@CARLSMITH.COM

OUR REFERENCE NO.:  
013280-00079

*Picked up at T.  
14:38  
T. Ashtiani  
SEP. 15, 2003.*

September 15, 2003

Tony H. Ashtiani  
Post Office Box 12723  
Tamuning, Guam 96931

Re: Issues Pertaining to Discovery

Dear Mr. Ashtiani:

This letter addresses several issues pertaining to the discovery phase of this case. Please review the contents of this letter carefully.

**1. PLAINTIFF'S MOTION TO COMPEL**

This letter confirms that Continental does not have any documents in its possession evidencing an insurance policy that covers Continental for violations of employment discrimination and wrongful termination.

**2. DEFENDANT'S MOTION TO COMPEL**

I have reviewed your Responses to Defendant's First Set of Interrogatories and First Request for Production of Documents. I am requesting that you reconsider your responses to the following requests and interrogatories, and submit a Supplemental Response. **We have agreed to meet and confer regarding these issues on Wednesday, September 17, 2003, at 10:00 a.m. (Guam time).** If you fail to supplement your responses, Defendant will be filing a Motion to Compel.

**2.1 Interrogatories**

(a) **Interrogatory No. 2(c)** requested that you describe the type of treatment you received from each and every doctor or health care provider. Please clarify your response. For example, was Dr. Chenet's only treatment a recommendation to attend physical therapy? What treatment, if any, was prescribed by Dr. Rapadas?

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(b) **Interrogatory No. 14** requested that you identify the name of each and every witness you intend to call at trial, the nature of their testimony, and their address and/or phone number, on each count listed in your Second Amended Complaint. Your Response states that you provided this information in your Initial Disclosures. Your Initial Disclosures, however, provides a list of 81 witnesses and is not broken down by each count. Most importantly, you have failed to identify the nature of each witness' testimony. Please amend your Response to conform with the Request.

(c) **Interrogatory No. 19** requested that you provide an explanation as to how each item of damages was calculated and identify each document that mentions, refers to, relates to, reflects or evidences any of your damages in this case, and identify each person who has knowledge of the information sought by this interrogatory. You responded that the damages are listed in your Initial Disclosures. Your Initial Disclosures, however, provide no specific calculation of damages, and explanation of that calculation, and a listing of persons who have knowledge of that calculation. Please amend your Response to conform with the Request.

## **2.2 Request for Production of Documents**

(a) **Request No. 3** asked that you provide all documents demonstrating a plan or scheme to "cover-up" during EEOC proceedings in your case and in all "similar cases" you are aware of. You objected to production of the similar cases on the bases of work product and privilege. If you intend to produce evidence of these similar cases at trial, the doctrines of work product and privilege do not apply. Please turn over whatever evidence of similar cases you are aware of.

(b) **Request No. 7** asked that you turn over any and all documents evidencing or reflecting any economic and/or out-of-pocket loss you claim to have suffered as a result of the alleged discrimination. Your Response was non-responsive.

(c) **Request No. 8** asked that you provide a chronology of events referencing, relating or referring to the facts made the basis of your lawsuit. Your Response was non-responsive.

(d) **Request No. 11** asked that you produce a copy of any documents, notes, or records of any kind that you made or kept employed by CMI concerning the facts made the basis of this lawsuit. Contrary to your Response, this is not a vague, overbroad and ambiguous Request. Rather, it is specific in time - while employed at CMI - and scope - relating to the basis of this lawsuit. Please produce the requested documents.

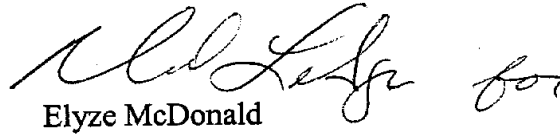
(e) **Request No. 13** asked that you produce tape recordings, audio, video or both that you obtained and/or produced regarding the facts made the basis of this lawsuit. Contrary to your Response, this is not an unreasonably burdensome, oppressive, or vexatious request. Rather it is specific in scope to the facts made the basis of the lawsuit, and is thus limited in time to the timeframe surrounding your termination.

Tony H. Ashtiani  
September 15, 2003  
Page 3

I especially wish to remind you that you must turn over every document that we have requested in a timely manner, particularly if you plan to introduce them at trial.

I look forward to our meeting this Wednesday. Feel free to contact me before then if you have any questions.

Sincerely,

 for  
Elyze McDonald

4815-2446-1056.2